

REMARKS

Status of the Claims

Claims 1, 3 and 5-17, 19 and 20 are now pending in the application. In the present Amendment, claim 18 has been canceled and claims 1 and 11 have been amended. Support for these amended claims can be found throughout the specification and the originally filed claims. Applicants have not introduced any new matter by the amendments.

Specifically, support for fixing a cell-containing sample directly in divided compartments of a support can be found, *inter alia*, at Examples 1-3 of the specification.

Support for the contents of the kit recited in amended claim 11 can be found, *inter alia*, at page 31, line 21, to page 34, line 4, of the specification.

Withdrawn Rejections

Applicants note with approval that the rejection of claims 1, 3 and 5-20 under 35 U.S.C. § 112, second paragraph, as being indefinite, and the rejection of claims 1, 3, 9-17 and 19 under 35 U.S.C. § 102(b) as being anticipated by Cloyd et al. (U.S. Patent No. 6,448,014) have been withdrawn by the Examiner. The Examiner also withdrew the rejection of claims 11-17 under 35 U.S.C. § 102(b) as being anticipated by Krystosek et al. (U.S. Patent No. 5,264,343) and, alternatively, by Saunders (U.S. Patent No. 6,087,134).

Rejections Under 35 U.S.C. § 102(e)

Claims 1, 3, 9-10 and 19 remain rejected under 35 U.S.C. § 102(e) as being anticipated by Chu (U.S. Patent No. 6,703,247). Applicants respectfully traverse.

A *prima facie* case of anticipation requires that a single publication teach, either expressly or inherently, each and every element or limitation of the claim, including any functional limitations. M.P.E.P. § 2131. According to the Office, Chu teaches "fixed cells 'in' a support having divided compartments." Office Action, page 4. Applicants have amended claim 1 to clarify that a cell-containing sample is fixed directly in divided compartments of a support. Applicants respectfully submit that this claim element is not disclosed or suggested by Chu.

Chu, at best, discloses the fixation of cell samples to slides, which may in turn be placed in other vessels for further analyses. As recognized by the Examiner, Chu does not teach or suggest fixing samples directly to the compartments of the support. Office Action, page 4. Claims 1, 3, 9-10 and 19, as amended, now recite this claim element.

Thus, for at least the reasons discussed above, Chu does not disclose or suggest each and every element of claims 1, 3, 9-10 and 19. Accordingly, Chu does not anticipate claims 1, 3, 9-10 and 19, and Applicants respectfully request that this rejection be withdrawn.

Rejections Under 35 U.S.C. § 102(b)

Claims 1, 3, 5-6, 9-10 and 19-20 remain rejected under 35 U.S.C. § 102(b) as being anticipated by Blumenfeld et al. (U.S. Patent No. 6,228,634). Because Blumenfeld et al. does not teach each and every element of the pending claims, Applicants respectfully traverse.

As with Chu, the Office contends that Blumenfeld et al. discloses fixing a cell-containing sample in divided compartments of a support. However, the Examiner also recognized that Blumenfeld et al. does not teach or suggest fixing samples directly to

the compartments of the support. Office Action, page 6. As discussed above, claims 1, 3, 5-6, 9-10 and 19-20, as amended, now recite this claim element.

As with Chu, Blumenfeld et al. does not disclose or suggest each and every element of the pending claims. Thus, Blumenfeld et al. does not anticipate claims 1, 3, 5-6, 9-10 and 19-20.

Claims 11-17 were rejected under 35 U.S.C. § 102(b) as being anticipated by Crouch et al. (U.S. Patent No. 6,599,711). According to the Office, Crouch et al. teaches a kit comprising a support divided into a plurality of compartments. Office Action, page 7.

Claim 11, claims 12-17 dependent therefrom, has been amended to recite kits that comprise a sample-fixing support divided into a plurality of compartments to fix a sample directly in the compartments, a target gene amplifying primer; PCR reaction buffer, a mixture of deoxynucleoside triphosphate, labeled deoxynucleoside triphosphate, thermostable DNA polymerase, and an indicator for detecting amplified nucleic acids. Crouch et al. does not teach or suggest a kit comprising these components. Accordingly, Crouch et al. does not anticipate claims 11-17.

Thus, for at least the reasons discussed above, Blumenfeld et al. and Crouch et al. do not anticipate the amended claims. Accordingly, Applicants respectfully request that all rejections under 35 U.S.C. § 102(b) be withdrawn.

Rejections Under 35 U.S.C. § 103(a)

Claims 7-8 remain rejected under 35 U.S.C. § 103(a) as obvious over Blumenfeld et al. in view of Stapleton et al. (U.S. Patent No. 6,103,192). Claims 11-17 were rejected as obvious over Chu or Blumenfeld et al. in view of Krystosek et al. (U.S.

Patent No. 5,264,343). Finally, claim 18 was rejected under 35 U.S.C. § 103(a) as obvious over Chu or Blumenfeld et al. in view of Krystosek et al. and Saunders. Claim 18 has been canceled. Because neither Chu nor Blumenfeld et al., whether considered alone or in combination with Stapleton et al. or Krystosek et al., teach each and every element of claims 7-8 or 11-17, Applicants respectfully traverse.

A *prima facie* case of obviousness has three distinct requirements. First, the references must teach or suggest every claim element. M.P.E.P. §§ 2142 and 2143.03. Second, there must be a motivation to modify or combine the teachings of the cited references. M.P.E.P. §§ 2143 and 2143.01. Third, there must be a reasonable expectation of success in performing the modified or combined teachings of the references. M.P.E.P. § 2143.02.

After the claim amendments set forth above, claims 7-8 and 11-17 now each indirectly recite that a cell-containing sample is fixed directly in divided compartments of a support. As discussed above, neither Chu nor Blumenfeld et al. teach or suggest this claim element. Likewise, Stapleton et al. Krystosek et al. and Saunders do not teach or suggest this claim element.

Therefore, even combining the teachings of Chu or Blumenfeld et al. with Stapleton et al. or Krystosek et al., one does not arrive at the invention recited in the amended claims. Because none of these references, alone or combined, teach each and every element of claims 7-8 or 11-17, as amended, Applicants submit that claims 7-8 and 11-17 are patentable over the cited references. Applicants thus respectfully request that all rejections under 35 U.S.C. § 103(a) be withdrawn.

Conclusions

In view of the foregoing amendments and remarks, Applicants respectfully request the entry of this Amendment into the record, reconsideration of this application, and the timely allowance of the pending claims. If the Examiner has any questions regarding this Amendment and Response, the Examiner is invited to contact the undersigned at 303-863-9700.

In the event that any fees are due in connection with this response, please debit Deposit Account No. 19-1970.

Respectfully submitted,

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